

April 10, 1937

State Board of Social Security & Welfare
506 Heard Building
Phoenix, Arizona

Attention: Mr. Garrett

Dear Sir:

In your letter of April 9th you asked if a member of the County Board to be appointed under Substitute House Bill No. 84, being required to serve without pay can lawfully be appointed Secretary for the Board.

I have examined Substitute House Bill No. 84 and especially paragraph 10 thereof with a view of determining the proper answer to this question. In order to properly answer it, it is necessary to construe Section 10, together with Section 8 of the bill. In examining Section 8 we find that all of the employees of both the State and County Boards, excepting the Executive Director, must be employed on a merit basis. Subdivision "G" of Section 8 provides that within one hundred and twenty days the officers and employees of the State and County Boards must be employed in accordance with the provisions of the Act.

Subdivision "D" of Section 10 provides for the organization of the County Board by the selection of a chairman and provides that the Board may employ a full time Secretary and such other employees as may be necessary.

I have made a research for authority on the question and the cases are very few. The leading case seems to be the case of State vs. Dean, decided by the Supreme Court of Kansas on December 7, 1918, and found in 176 Pac. at page 633. That case involves an identical situation with the question here presented. The Commission was appointed and required to serve without pay under the law, and two members of the Commission selected a third as Secretary and fixed his salary. The Kansas Act made the Governor ex-officio chairman of the Commission and required him to sign all of the vouchers.

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After the termination of the duties, an action was brought against the member who was appointed Secretary, to recover the salary paid him and the Kansas Supreme Court held that his appointment was unlawful as being against public policy and ordered a judgment to be entered requiring him to refund the money paid.

It is therefore the opinion of this office that the appointment of a member of the County Board as Secretary at a salary violates both the letter and the spirit of the law and is unlawful, and that such member could be sued and compelled to repay any salary which he might have received.

Very truly yours,

JOE CONWAY
Attorney General

E. G. FRAZIER
Special Assistant
Attorney General